

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE MUNOZ,

Defendant and Appellant.

E029205

(Super.Ct.No. FSBSS028649)

**OPINION**

APPEAL from the Superior Court of San Bernardino County. Michael M. Dest,  
Judge. Affirmed.

Chris Truax, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney  
General, Gary W. Schons, Senior Assistant Attorney General, Peter Quon, Jr., and Raquel  
M. Gonzalez, Supervising Deputy Attorneys General, and Jeffrey J. Koch, Deputy Attorney  
General, for Plaintiff and Respondent.

A jury found true that defendant met the criteria of a mentally disordered offender (MDO) (Pen. Code, §§ 2962, 2966, subd. (c)).<sup>1</sup> Defendant was then ordered returned to Patton State Hospital for further treatment and care. Defendant's sole contention on appeal is that the trial court erred when it allowed the prosecution to introduce hearsay evidence offered by experts for its truth. We find no reversible error and will affirm the judgment.

## I

### FACTUAL AND PROCEDURAL BACKGROUND

On May 22, 1998, after defendant was convicted in Los Angeles County, case No. F279535, of assault with force likely to produce great bodily injury (§ 245, subd. (a)(1)), he was sentenced to state prison for a term of two years. On December 14, 1999, the Board of Prison Terms (the Board) determined that he met the criteria of section 2962 as an MDO. As a condition of parole, defendant was required to accept treatment through the State Department of Mental Health.

Subsequently, at an annual review, the Board determined that defendant had a severe mental disorder, and the disorder was not in remission and could not be kept in remission without treatment. On November 20, 2000, defendant filed a petition to challenge the findings of the Board pursuant to section 2966, subdivision (c).

Jury trial commenced on February 22, 2001. The prosecution presented the testimony of three experts, Drs. Daniel Sherman, Robert Suiter, and John Deirmenjian. The expert evidence was directed at the three elements of the MDO statute, namely (1) whether

---

<sup>1</sup> All future statutory references are to the Penal Code unless otherwise stated.

defendant had a severe mental disorder, (2) whether defendant's severe mental disorder was or was not in remission, and (3) whether defendant represented a substantial danger of physical harm to others. (§ 2966, subd. (c)). Each expert testified that defendant had a severe mental disorder, that the mental disorder was not in remission, and that defendant presented a substantial danger of physical harm to others.<sup>2</sup>

Defendant did not present any witnesses on his behalf.

The jury returned a verdict finding the Board's determination that defendant met the criteria of being an MDO pursuant to sections 2962 and 2966, subdivision (c) to be true. Defendant was thereafter ordered returned to Patton State Hospital for further treatment.

## II

### DISCUSSION

Defendant contends the testimony of the prosecution's expert witnesses was improperly admitted as inadmissible hearsay. He claims the experts provided hearsay testimony under the guise of providing a basis for their opinions.

The relevant factual background is as follows: Prior to trial, relying on *People v. Campos* (1995) 32 Cal.App.4th 304 (*Campos*), defense counsel requested that the trial court preclude the expert witnesses from testifying about the hearsay contents of other expert witness reports and that they only be allowed to rely on the opinions of the nontestifying experts in forming their own opinion. After the trial court noted that the *Campos* case was distinguishable from this case because in that case only one expert

---

<sup>2</sup> Additional facts will be discussed, below, as pertinent to the issue defendant  
[footnote continued on next page]

testified, the court ruled that an expert witness can be properly examined about the basis of his opinion, but the witness cannot testify as to the opinion of the nontestifying doctor under *Campos*.

Accordingly, at trial, the court permitted the prosecutor to examine the expert witnesses about the bases of their opinions subject to defense counsel's hearsay objections. Specifically, Dr. Sherman, a clinical and forensic psychologist, testified he performed an annual MDO evaluation of defendant at Patton State Hospital on November 9, 2000. His evaluation consisted of a clinical review of records and a personal interview with defendant. He explained that his review of defendant's records was important because (1) as an independent evaluator, he spends a very short time period with the individual and thus has to rely "upon other people's perceptions and observations and records," which are gleaned over a longer period of time; and (2) the person being evaluated does not always tell the truth; thus, the evaluator has to look for collateral sources of information. He further testified that the standard of care in forensic psychology is to use clinical records in preparing an evaluation.

Dr. Sherman opined that defendant had a severe mental disorder. Specifically, defendant had a schizoaffective disorder, bipolar type; a cognitive disorder; a personality change due to a head injury; and a history of substance abuse. Over defense counsel's hearsay objection, Dr. Sherman also testified that he found significant the information regarding defendant's history of supplemental security income as contained in an evaluation

---

*[footnote continued from previous page]*  
raises in this appeal.

performed on October 15, 1998, by Dr. Robert Weber, who did the initial MDO evaluation on defendant. Dr. Sherman stated Dr. Weber's evaluation also referred to defendant being placed in a locked observation unit at the California Men's Colony; defendant's refusal to take psychiatric medication; and defendant making bizarre gestures and displaying numbness and hostile affect. Dr. Sherman further testified that it was significant Dr. Weber's report referred to an evaluation done by a neurologist, Dr. Coyle, who reported defendant had a brain stem injury. Dr. Sherman noted he considered that injury to be important.

Dr. Sherman further testified that he relied on the following information discussed in Dr. Weber's report to form the basis of his opinion that defendant suffered a severe mental disorder: defendant had made four suicide attempts, reported hearing voices and feeling that God spoke to him, and made grandiose statements that he was a lion and had to save the world.

Dr. Sherman also relied on Dr. Weber's report, which contained information of defendant's noncompliance with medication, to form his opinion as to whether defendant could be released on an outpatient basis. He concluded that defendant would not be able to "make it on the outside" without psychiatric medication and that since defendant found it difficult to function inside Patton State Hospital while he was on psychiatric medication, there was a very low chance that defendant could function in an unstructured setting without medication.

Dr. Sherman testified that he also relied on the annual evaluation prepared by Dr. Jenkins, in conjunction with Dr. Wursten, on December 3, 1999. He explained that, in forming his opinion about defendant suffering from a severe mental disorder, he considered

the following symptoms reported in the joint Jenkins-Wursten report to be significant: (1) defendant hearing “spooky” voices before his head injury; (2) defendant’s continued refusal to take psychiatric medication if released; (3) defendant’s inappropriate sexual comments to staff; (4) defendant’s striking a window and other types of violent behavior without apparent provocation; (5) defendant hearing voices; and (6) defendant’s behavior being psychotic, agitated, hostile and aggressive. Dr. Sherman found those symptoms to be significant because they were consistent with schizoaffective disorder and suggested there was a psychotic disorder present before defendant’s head injury.

Dr. Sherman also relied on Dr. Karen Galin’s report of her psychological assessment of defendant, which was conducted on March 28, 2000. After Dr. Sherman discussed the information from Dr. Galin’s report that he found to be significant in forming his opinion about defendant, he testified about his recent interview with defendant regarding defendant’s recent history. Dr. Sherman testified that (1) defendant was uncertain about taking his medication; (2) defendant denied he had taken psychiatric medication in the past, when he was actually taking “a slew of psychiatric medication”; and (3) defendant denied he had been hospitalized for psychiatric reasons, when he had in fact been at three psychiatric hospitals. Dr. Sherman explained that defendant’s denials showed why it was necessary to check the work and documentation of others in order to evaluate defendant.

Dr. Sherman opined that defendant was not in remission “given the available information . . . .” Basically, in forming his opinion, Dr. Sherman relied on the reports of the previous doctors who had evaluated defendant. Based on the reports, defendant’s

criminal history, and his own observations of defendant, he also concluded that defendant presented a substantial danger of physical harm to others.

Dr. Suiter, a clinical and forensic psychologist, who also conducted an MDO evaluation of defendant, rendered nearly identical opinions as Dr. Sherman. He also explained the benefits of a clinical review of prior records. Relying on his own clinical interview of defendant and reports prepared by Drs. Weber, Wunderlich, Burton, Berning, Jenkins, Kuiken, Aaen, and Deumeny, and other reports prepared at Patton State Hospital, Dr. Suiter opined that defendant had a severe mental disorder, the mental disorder was not in remission, and defendant presented a substantial danger to physical harm to others. Dr. Suiter testified regarding the contents of those reports as a basis for his opinion in this case.

Dr. Deirmenjian, the forensic psychiatrist who treated defendant at Patton State Hospital and spoke with defendant about four days every week during the six-month period from August 2000 to February 8, 2001, also testified at the trial. He stated that he performed a two-hour evaluation of defendant in early November 2000 for purposes of defendant's annual MDO evaluation, and for that purpose, he conducted a review of defendant's clinical record and also performed a clinical interview of defendant. In addition, Dr. Deirmenjian regularly participated in several meetings with other members of defendant's treatment team prior to writing his report, and he participated in quarterly treatment planning conferences with psychiatrists, psychologists, social workers, rehabilitation therapists, nurses and others involved in the care of defendant as well as defendant. Dr. Deirmenjian also witnessed defendant's past behavior.

Dr. Deirmenjian opined that defendant suffered a schizoaffective disorder, bipolar type, and also a cognitive disorder not otherwise specified based on defendant's long history of auditory hallucinations, hypersexuality, impulsive behavior, and aggressive behavior. He also concluded that defendant was not in remission "because while being treated with antipsychotic medication, with mood stabilizers and with antidepressants, [defendant] continues to experience auditory hallucinations." Dr. Deirmenjian explained that defendant continues to have symptoms of hypersexual behavior, impulsive behavior, physically aggressive behavior, inappropriate behavior towards staff, and disorganized thought process, which are all symptoms of schizoaffective disorder bipolar type, despite counseling and medication.

Dr. Deirmenjian further opined that defendant represented a substantial danger of physical harm to others based on defendant's history of violent behavior, his lack of awareness concerning his disorder, and his lack of understanding concerning how to manage his disorder outside a structured hospital environment, i.e., his lack of a relapse prevention plan. He explained, "Based on what I've witnessed as being a treating psychiatrist and in my interactions with [defendant], he doesn't have the capacity to control his behavior and . . . not to engage in violence."

Defendant essentially contends the trial court erred when it allowed the prosecution's expert witnesses to testify that they relied on other medical evaluations and that the evaluations confirmed their opinions that defendant met the MDO criteria. Specifically, he claims an expert may not "introduce otherwise inadmissible hearsay in the guise of offering reasons for an opinion."



“Psychiatrists, like other expert witnesses, are entitled to rely upon reliable hearsay, including the statements of the patient and other treating professionals, in forming their opinion concerning a patient’s mental state.” (*Campos, supra*, 32 Cal.App.4th 304, 307-308, citing Evid. Code, § 801, subd. (b); *People v. Young* (1987) 189 Cal.App.3d 891, 913; *Conservatorship of Torres* (1986) 180 Cal.App.3d 1159, 1163; *Korsak v. Atlas Hotels, Inc.* (1992) 2 Cal.App.4th 1516, 1524-1525; and *People v. Miller* (1994) 25 Cal.App.4th 913, 917-919.) Furthermore, on direct examination, the expert witness may state the reasons for his or her opinion and testify that reports prepared by other experts were a basis for that opinion. (*Campos, supra*, at p. 308; *People v. Coleman* (1985) 38 Cal.3d 69, 92.)

However, an expert witness may not, on direct examination, reveal the content of reports prepared or opinions expressed by nontestifying experts. (*Campos, supra*, 32 Cal.App.4th at p. 308.) “““The reason for this is obvious. The opportunity of cross-examining the other doctors as to the basis for their opinion, etc., is denied the party as to whom the testimony is adverse.””” (*Whitfield v. Roth* (1974) 10 Cal.3d 874, 894, quoting *Lynch Meats of Oakland, Inc. v. City of Oakland* (1961) 196 Cal.App.2d 104, 112; see also *People v. Reyes* (1974) 12 Cal.3d 486, 503.) Thus, it generally is not appropriate for the testifying expert to recount the details of the other psychiatrist’s report or expression of opinion. (*Campos, supra*, 38 Cal.3d at p. 308; *People v. Coleman, supra*, at p. 92; *Whitfield, supra*, at pp. 894-895.)

In the present case, we agree there was error by the court in the admission of that portion of the testimony by Drs. Sherman and Suiter regarding the comments of nontestifying psychiatrists in their reports. The scope of this testimony went beyond the

boundaries permitted by the Evidence Code; however, the error was not prejudicial.

Dr. Deirmenjian, who based his opinions on personal knowledge, testified that defendant met the criteria of an MDO pursuant to sections 2962 and 2966, subdivision (c). He explained that in his opinion defendant had a severe mental disorder which was not in remission and that defendant presented a substantial danger of physical harm to others. The record is clear that Dr. Deirmenjian based his opinions on his own observations, interactions, and evaluations of defendant. The record is also clear that Dr. Deirmenjian did not recount the details of the other psychiatrist's report or expression of opinion. Based on the overwhelming evidence in Dr. Deirmenjian's testimony that defendant met the criteria of an MDO, it is not reasonably probable that a result more favorable to defendant would have occurred in the absence of the admission of the challenged hearsay evidence. (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

### III

#### DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI  
J.

We concur:

HOLLENHORST  
Acting P.J.

GAUT  
J.